

HAZARDOUS MATERIALS AND WASTE MANAGEMENT DIVISION'S
FINDINGS REGARDING

a

REQUEST FOR SCHEDULE EXTENSION

for the

WALNUT CREEK DRAINAGE (OU-6)

PHASE I RFI/RI REPORTS

at the

ROCKY FLATS PLANT

dated

July 21, 1993

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Following are the Division's responses to DOE's justification for schedule extension on the Draft and Final Phase I RFI/RI Reports. Our responses are organized per the enclosures that accompanied DOE's letter of July 21st, 1993.

ENCLOSURE 1.

Following is the Division's response to the primary schedule delays presented in Enclosure 1.

Item (bullet) 1

- o Paragraph 222 of the (IAG) specifies five "good cause" justifications for extension requests. DOE's letter of May 4, 1993 alludes to two of these items, as follows:
 - B A delay caused by another Party's failure to meet any requirement of this Agreement, and
 - E Any other event or series of events mutually agreed to by the Parties as constituting good cause
- o The Division believes that "additional work" as described in Part 32 of the IAG would normally constitute "good cause" per Item E, above. However, the Division does not agree that "additional work", was required by EPA and the Division
- o On October 11, 1991, the Division wrote that " the second major shortfall in the workplan is it's inability to satisfy the minimum requirements for a Phase I investigation as outlined in sections VI and VII of the IAG Statement of Work" and we further stated that ". . it is the Division's position that this workplan does not represent a complete Phase I investigation "
- o DOE asserted, and apparently continues to assert, that requirements beyond those listed in Table 5 of the IAG constituted additional work. However, the Division in a letter dated September 19, 1991 referencing "Phase I and Phase II Workplans and Investigations" clearly stated its opposition to DOE's attempts to defer work to a Phase II, concluding that, Phase I investigations should be as comprehensive as possible. The Division does not believe that requiring a comprehensive workplan constituted additional work per Part 32 of the IAG

Therefore, DOE's failure to provide a comprehensive work plan, not EPA and the Division's presumed failure to approve the workplan as originally scheduled in the

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IAG, is the cause of the four and one half month delay. Had DOE disputed this issue, the resulting delay would have been covered as "good cause" under Paragraph 222 (C). Nevertheless, the Division favors granting some schedule extension based on DOE's early inexperience with the interpretation of IAG requirements and the dispute process

Item 2.

- o The detailed IAG schedules, dated August 14, 1990, called for DOE to begin workplan implementation on November 14, 1991.
- o Per paragraph VI of the SOW, "The RFI/RI Workplans required by this agreement shall meet the requirements as outlined in Section VI B of this Attachment and shall be implemented immediately (emphasis added) upon joint approval by EPA and the State". This indicates that DOE should have anticipated and completed all necessary preparations for field activities by November 14, 1991 whether the EPA approved or disapproved the work plan by that date.
- o DOE referenced the detailed IAG schedules as providing 41 (working) days for procurement activities. These 41 days pertained to contracting the Phase I workplan preparation not workplan implementation. Clearly, DOE's logistical efforts to implement a work plan were not to begin once the work plan was approved but were to have been conducted in parallel with the approval process.
- o DOE may argue that bid packages cannot be released to contractors until the scope of the work is known and approved. If so, procurement for workplan implementation should have been on the critical path schedule and to have omitted this during IAG negotiations should have been a "glaring error"
- o Lastly, since approval of the workplan was delayed until February 27, 1992, DOE was actually given more time to complete the procurement process

From the Division's perspective, the scope of workplan activities were sufficiently known, well enough in advance, that finalization of the procurement process should have been possible within two-three weeks of EPA's approval of the workplan. Consuming three months on the critical path for procurement activities does not constitute good cause

Item 3

- o Although the preparation of the Health and Safety Plan was not included in the IAG schedules, it was not unanticipated. Section 5.1 of the September, 1991 version of the workplan states. "Other projected-related documents are currently being prepared" and "The Health and Safety Plan (HSP) is also being completed by EG&G". The HSP was not intended to be on the critical path as suggested by DOE. In fact it should have been completed long before the actual workplan approval date of February 27, 1992
- o Furthermore, obtaining internal comments from seven reviewers appears to be a cultural burden that suggests the need for streamlining.

The Division sees no factual basis for granting an extension based on preparation of the Health and Safety Plan

Item 4

The Division is aware of DOE's efforts to improve laboratory turn-around time and endorses an extension commensurate with the actual number of days in excess of the IAG scheduled 63 days. In the future, laboratory turn-around may not be considered good cause.

Other Delays

Item (bullets) 1-3

The Division questions the extent to which compliance with DOE floodplain regulations was necessary or unavoidable. The valleys of the Walnut Creek drainage do not conform to the classical geomorphic definition of a floodplain. We believe that it may have been possible to obtain a certification from a geologist or soils scientist that Walnut Creek did not constitute a floodplain. If that was possible, DOE would not have needed to obtain a Categorical Exclusion for work in the Walnut Creek drainage.

Item 4

Regarding the "potential habitat" for the Ladies Tresses Orchid, the Division questions whether a habitat determination was necessary or appropriate for Walnut Creek. Since the orchid was not identified in the survey area, the question may be asked whether the survey was justified. We note that many other Threatened and Endangered species exist. Are the attributes of Walnut Creek such that surveys for other species is unnecessary or were they completed under earlier site wide ecological assessments?

Items 5 & 6

OMB budget reduction, coupled with DOE's unilateral decision to postpone the start of the HHRA, does not constitute good cause. Per the IAG only Congressional budget reduction would have constituted good cause.

Item 7

The preparation of the HHRA TMs, and the agency reviews, were to have been performed off the critical path such that the HHRA efforts and the RFI/RI Report deliveries would not have been affected. The lack of IAG scheduled review times should not have delayed the HHRA and does not constitute good cause.

ENCLOSURE 2.

Following is the Division's response to the OU-6 schedule assumptions presented as Enclosure 2.

Item 2

- o As EPA is aware, the Division requires IHSS specific or "hot spot" risks assessments. The averaging effects of a single OU wide human health risk assessment (HHRA), and thus potential masking of risk, remains a significant issue to the Division. We note that the HHRA analysis has the same duration as the preparation of the draft RFI/RI Report (See Enclosure 3). The Division believes that an adequate HHRA, meeting both Division and EPA requirements, can be completed in the 105 days allotted in the schedule for completion of the HHRA. Consequently, no additional time to meet this requirement should be granted.

ENCLOSURE 3.

Following is the Division's response to the revised and proposed schedule presented as Enclosure 3.

- o The Division does not see a necessity for serial review of the draft RFI/RI report by DOE's Rocky Flats Office, DOE headquarters office, then by EPA and Division. Activity ID # 122550080 "DOE/RFO Review Draft Phase I RFI/RI" and Activity 122550090 "DOE/HQ Review Draft Phase I RFI/RI" should be performed concurrently with Activity 12550140 "EPA/CDH Review Draft Phase I RFI/RI". By eliminating these

two steps and Activities 122550100, 110 and 120, eighty-four working days, four months, can be saved on the schedule

- o As an approvable document is the goal of all parties, the Division recommends against any reduction of the preparation time for the draft and final RFI/RI Reports, the HHRA, or to incorporate Division or EPA comments

ENCLOSURE 4:

The efforts that DOE and its contractors have made toward expediting implementation of the Phase I RFI/RI Workplan for OU-6 is commendable. However, the consequence of these efforts is that additional time for submittal of the documents has not become necessary. DOE should not expect an additional benefit (schedule extension) for managing in an effective manner